



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. C-2171

Re: Whether twenty per cent tax
levied by Article 7047f,
Vernon's Civil Statutes, is
due under various fact situa-
tions.

In your letter of April 4, 1940, you request our opinion as to whether or not the twenty per cent prize tax levied by Article 7047f, Vernon's Civil Statutes, is due under each of three different fact situations, which you submit to us as follows:

1. The Optimist Club of Wichita Falls, Texas, is operating a bingo game to raise funds to construct a school building upon public school property in Wichita Falls. The Optimist Club itself is a corporation organized for charitable purposes. The money received as proceeds from such bingo game is placed in a special bank account and all of it, as we understand, is to be used in the construction of such building and no person receives any profit from the undertaking.

2. The Texas State Bowling Association is an unincorporated association of bowlers residing in the State of Texas. To be a member a person must be male, white and of good reputation and also must be a member of the American Bowling Congress, the national parent organization. The purpose of the Association is to promote bowling and to prescribe rules and regulations for the conduct of its members. The Association owns no property whatever and has no interest in any bowling alley

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anywhere. It is not established to make money and no one receives any proceeds whatsoever from the holding of this contest except the Secretary who receives about One hundred Dollars a year for his clerical work. The Association has a bowling tournament annually in some Texas City selected by it. The officers make a contract with some bowling alley in the selected town for the use of such alley for the tournament at a certain price per person competing per game. The bowling alley selected has nothing to do with the tournament except to furnish the alleys to the association for use during the tournament. No one is eligible to compete except members of such Association and American Bowling Congress. Each person entering the tournament pays an entry fee which is used as follows: First, payment of expenses, including rents on bowling alley, salary of secretary, and other similar expenses. Second, the remainder is paid out to contestants as prizes dependent upon scores bowled by such contestants, that is, the contestant who is most skillful and bowls the highest score gets the larger prize and, of course, many contestants do not receive anything. No other person, officer or promoter receives any money at all from the Association.

3. A newspaper, the Falls County Record, puts on a campaign to increase its subscription list. For a certain period of time each new subscriber is entitled to a given number of votes for some contestant or candidate. The contestant receiving the largest number of votes gets an automobile, or a large cash award as the first prize. Second, third, fourth and fifth prizes also are given to the candidates receiving the next highest votes in their order. As a matter of fact the candidates or contestants will be people soliciting subscriptions for the paper and receiving the votes of the subscribers obtained by them. In addition to the prizes already mentioned a cash commission of 10 per cent is paid to all active non-prize winners on subscription collections paid by them. It is only theoretically possible for a person to win one of the prizes without being active in soliciting and obtaining subscriptions. Those obtaining the most subscriptions are those who will win the prizes.

Article 7047f, Vernon's Civil Statutes, reads in part as follows:

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"(a) Every person, firm, or corporation conducting a theatre, place of amusement, or any business enterprise in connection with the operation of which a prize in the form of money or something of value is offered or given to one or more patrons of such theatre, place of amusement, or business enterprise, and not given to all patrons thereof paying the same charge for any certain service, commodity, or entertainment, shall make a verified report on the twenty-fifth day of each month to the Comptroller of Public Accounts of the State of Texas, showing the amount of money so given in prizes, and the value of all prizes or awards so given in connection with such business during the next preceding month.

"(b) There is hereby levied a tax equal to twenty per cent (20%) of the value of all such money, prizes, and awards given in connection with the operation of each and all of the foregoing business enterprises, and at the time of making the report to the Comptroller of Public Accounts, the owner or operator of any such business shall pay to the State Treasurer such tax upon the total amount of money, prizes, and awards so given during the next preceding month"

Your question is controlled by our Opinion No. 0-1637 with reference to both the Optimist Club and the bowling contest sponsored by the Texas State Bowling Association. In line with the views therein expressed, we hold that neither of these projects is a business enterprise within the meaning of the taxing statute.

Clearly the prizes given by the Falls County Record under the plan set forth in the third fact situation would not be subject to the tax. By producing the largest number of subscriptions to the paper the prize winners have lifted themselves out of the class of those "paying the same charge."

Your question is given a negative answer throughout.

Yours very truly

APPROVED MAY 14, 1940

ATTORNEY GENERAL OF TEXAS

Gerard H. Mann
ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
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GRL:GS

